(3)

Supreme Court, U.S.
FILED
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No. 08-273

In the Supreme Court of the United States

DAVID M. CLAPPER,

Petitioner,

v.

TACCO FALCON POINT, INC.,

Respondent.

On Petition for Writ of Certiorari to the Michigan Court of Appeals

PETITIONER'S REPLY BRIEF

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October 10, 2008

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REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

1.

Respondent, TacCo Falcon Pointe, Inc. ("TacCo"), states that Petitioner David M. Clapper ("Clapper"), has made a number of "factual misrepresentations." TacCo neglects to materially point *out* these alleged "misrepresentations," stating that because there are "so many," to do so would be "inefficient."[1] In this way, it is difficult to substantively respond to TacCo's comment other than to say that Clapper stands by the factual statements made in the Petition. Unlike TacCo, Clapper supported factual statements with precise citations to the lower court record.

2.

Material to Clapper's presentation of a concrete federal question under the full faith and credit clause of the U.S. Constitution and federal statute requires the establishment of three points: (a) that Clapper's co-Judgment Defendant, American Realty Trust, Inc. ("ART"), paid Inland Mortgage Company ("Inland"), not TacCo; (b) that Indiana's common law regarding the strawman defense is what Clapper has represented it to be; and (c) that Michigan's common law regarding the strawman defense is what Clapper has represented it to be. The parties appear in agreement with respect to the third point; that Michigan's lower courts ruled that the strawman

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[1] *Compare* Sup. Ct. R. 15.2.

defense is not available in Michigan. In its Brief in Opposition, however, TacCo argues that Clapper cannot satisfy points (a) and (b).

a.

After the $3.2 million Judgment was entered against ART and Clapper in the Indiana state court, ART negotiated with Inland to "purchase" the Judgment from Inland, with ART designating the purchaser. TacCo has repeatedly argued throughout this litigation that TacCo or its parent, TacCo Financial, paid Inland. **Brief in Opposition, pp. 4-5.** As Clapper has repeatedly pointed out throughout this litigation, this is simply not true.

In **Appendix 1**, Clapper has attached documentary evidence that ART and/or ART's successor[2] paid Inland, paid the Judgment, and wired the money to Inland *from ART's bank account*.[3]

In **Appendix 2**, Clapper has attached a portion of the deposition of Inland's Senior Vice President, Francis Panico, who serviced the subject loan. Ms. Panico was asked who paid the money to Inland to

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[2] ART has since merged into American Realty Investors, Inc., *see* Petitioner's May 8, 2008 Brief in Support of Petitioner's Motion for Summary Disposition against TacCo, p. 7 & n.3, another entity owned or controlled in one way or another by Texas real estate tycoon, Gene Phillips, and his family's trust.

[3] **Appendix 1** (Exhibit K to Petitioner's May 8, 2008 Brief in Support of Petitioner's Motion for Summary Disposition against TacCo).

purchase the Judgment. She testified that *ART* paid the money and that the first $1.5 million ART paid served to pay down the indebtedness on the Judgment.[4]

As for evidence that TacCo allegedly borrowed money from TacCo Financial to pay Inland, **Brief in Opposition, p. 5**, Clapper served discovery on TacCo for evidence of these alleged intra-company loans. None was produced.[5] And with respect to the $1.5 million note TacCo contends it executed in favor of Inland, **Brief in Opposition, p. 4**, the note was guaranteed by ART.[6] Consider that: Judgment-Defendant ART guaranteed payment of Judgment-Plaintiff TacCo's debt to allow Judgment-Plaintiff TacCo to purchase Inland's creditor position over Judgment-Defendant ART.

The evidence establishes that ART paid Inland, not TacCo.

b.

Clapper believes the above facts (and those more fully developed in the Petition) support his strawman argument under Indiana law; i.e., that the Judgment has been paid because a co-judgment debtor or its

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[4] **Appendix 2, pp. 4a-5a** (Exhibit 14 to Petitioner's August 28, 2006 Brief on Appeal).

[5] Petitioner's May 8, 2008 Brief in Support of Petitioner's Motion for Summary Disposition against TacCo, p. 13.

[6] *Id.* at p. 13 & Ex. S.

"straw" (its sham, its alter ego) paid the Judgment to keep the judgment alive against another co-judgment debtor. This argument has venerable support in the common law of Indiana, the state that rendered the Judgment. At page 9 and note 24 of the Petition, Clapper cited this Court to a number of Indiana cases that support the strawman theory. For example, the Indiana Supreme Court has held:

> The payment of the judgment in favor of Green by one of the two joint debtors was an extinguishment, and, of course, this rendered it legally impossible to enforce it by the execution of a deed. Payment by one primarily liable as a judgment debtor extinguishes the judgment.[7]

This principle, that payment by a co-judgment debtor extinguishes the judgment, has been reaffirmed by the Indiana Court of Appeals at least twice.[8]

These principles were applied by the U.S. Court of Appeals for the Sixth Circuit (applying Indiana law) in *Lillie v. Dennert*. Clapper submits that *Lillie* is dead on point; and had the Michigan trial court below applied Indiana law, Clapper submits the Judgment would have been ruled satisfied.

In *Lillie*, Horrie obtained a judgment against Daggett and Dennert. Horrie subsequently assigned

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[7] *Klippel v. Shields*, 90 Ind. 81 (1883). *See also Zimmerman v. Gaumer*, 152 Ind. 552, 560-61 (1899).

[8] *See Lapworth v. Jones*, 133 Ind. App. 388, 392-93 (1962); *Carey v. Haddock*, 877 N.E.2d 842, 844 (Ind.App. 2007).

the judgment to Lillie in exchange for cash. Lillie sought to garnish and execute against Dennert's property. Dennert defended by arguing that "the money paid to Horrie was in reality the money of Daggett, the payment, as a matter of fact and law, the act of Daggett, and the action taken by Lillie a mere sham and pretense."[9] After an evidentiary hearing, the district judge was persuaded that the evidence supported Dennert's claim, and ordered that a judgment of satisfaction be entered.[10]

The Sixth Circuit affirmed. The Court found that there was evidence supporting the fact:

> that the judgment having been purchased with the proceeds of this note was, in substance and effect, bought by Daggett, acting by indirection, through the instrumentality of Lillie; in short, that Lillie acted in the entire transaction merely as a man of straw for and in behalf of Daggett, as the real actor.[11]

The Court further found that if:

> the judgment was thus in fact bought by Daggett, one of the joint tort feasors and judgment debtors, this clearly operated as an entire discharge and satisfaction of the judgment, even although the purchase was

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[9] *Lillie v. Dennert*, 232 F. 104, 105 (6th Cir. 1916).

[10] *See id.*

[11] *Id.* at 108.

> ostensibly made by Lillie and the assignment taken in his name in the effort to keep the judgment alive as an obligation against Dennert.[12]

That is what Clapper alleged that ART did through TacCo, and that is what the evidence has shown. Clapper's strawman argument therefore finds strong support in the common law of Indiana.

TacCo, however, disputes that it conceded that Indiana law provides for the strawman defense, and states that TacCo "disagrees" with the body of authority cited by Clapper. In TacCo's Brief in Opposition, however, no effort was made to distinguish the above authority. And no contrary authority was cited. Clapper construes this kind of silence as a de facto concession, particularly in light of the fact that the Michigan trial judge stated that "the strawman defense . . . is available in Indiana as a defense."[13] It would not be available in Indiana because the Michigan trial court said so; it is available because that is the rule published in Indiana cases like *Klippel*, *Lapworth*, and *Lille*. Therefore the material points (b) and (c) referenced at the beginning of this section have been established.[14]

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[12] *Id.* at 109.

[13] TacCo Brief in Opposition, **App. A**, p. 14b.

[14] Clapper's citation to the trial court record was not to establish that the trial judge applied Indiana law to the facts of this case in order to make some hypothetical ruling. The Michigan courts did not make such a ruling because, in applying Michigan law, they

The key issue raised in the Petition is whether the Michigan courts were right to hold that the full faith and credit clause required the Michigan trial judge to apply Michigan law to Clapper's defenses as opposed to Indiana law. Because the law on the strawman issue is different in Michigan than it is in Indiana, the decision to apply Michigan law was dispositive.

"The full faith and credit clause does not . . . protect a judgment . . . [that] has been paid."[15] Clapper's argument is that the relevant, preliminary inquiry, "the first step" using the phraseology of Justice Kennedy,[16] is what would Indiana do with these facts; not what would Michigan do. That is the essence of the federal question Clapper presented in his Petition. The above discussion demonstrates that the question is concrete, such that it gives this Court the opportunity to define the contours of full faith and credit when the rendition state says one thing regarding the continuing viability of a judgment, and the enforcing state says something completely different.

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held that no set of facts could *ever* satisfy the strawman defense, because it is simply not available under Michigan law. In this way, we agree with TacCo that no court has ever adjudicated Clapper's strawman defense on its merits.

[15] *Trauger v. A.J. Spagnol Lumber Co., Inc.*, 442 So.2d 182, 183 (Fla. 1983), *relying on Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 275 (1935).

[16] *Baker by Thomas v. General Motors Corp.*, 522 U.S. 222, 247 (1998) (Kennedy, J., concurring).

3.

It is not until page 15 of TacCo's Brief in Opposition that TacCo first substantively addresses the federal issues raised in the Petition.[17]

a.

TacCo argues that the Michigan courts faithfully interpreted the full faith and credit clause when they applied Michigan law to Clapper's defenses as opposed to applying Indiana law. As support, TacCo primarily relies on authority cited by Michigan's lower courts, that being this Court's 1998 decision in *Baker by Thomas v. General Motors Corp.*, 522 U.S. 222 (1998). At pages 16 and 17 of the Brief in Opposition, citing *Baker*, 522 U.S. at 235, TacCo states:

> "Full faith and credit . . . does not mean that States must adopt the practices of other States regarding time, manner, and mechanisms for enforcing judgments," but rather enforcement "measures remain subject to the even-handed control of the forum law."

The problem with TacCo's citation to this part of the *Baker* decision is that Michigan's application of its substantive law to Clapper's strawman defense has nothing to do with regulating: the *time* for enforcing the Judgment; the *manner* of enforcing the Judgment; or the *mechanism* for enforcing the Judgment.

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[17] This is after fifteen pages worth of swollen hyperbole and discourteous *ad hominem* attacks on Clapper counsel.

Clapper's defense has to do with *payment* and whether there is a Judgment to enforce. In the Petition, Clapper cited this Court's decision in *Hampton v. M'Connel*, 16 U.S. 234, 235 (1818), which held that "in every case arising under the act, the only inquiry is, what is the effect of the judgment in the state where it was rendered." The preliminary inquiry, therefore ("the first step") is what is the effect of the judgment in the court of rendition. Judge O'Connell, in his dissenting opinion in the Michigan Court of Appeals, summarized the issue articulately and makes the point better than we can:

> It is simply common sense to conclude that you cannot enforce a judgment that has been satisfied. In the present case, the trial court refused to conduct an evidentiary hearing to determine if the foreign judgment had been satisfied, and the majority opinion seems to allow plaintiff to collect on a judgment whether or not it has already been satisfied. . . . I concur with the majority that we apply Michigan law to *enforcement proceedings*. However, I note *that there is no enforcement proceeding if the judgment has been satisfied*.[18]

b.

At page 17 of the Brief in Opposition, TacCo argues that Clapper's full faith and credit argument would undermine the salutary goal of "uniformity," in that

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[18] Clapper's Petition, **App. A**, p. 19a & n.1 (O'Connell, J., Dissenting) (emphasis added).

"some judgments would be afforded greater status for purposes of enforcement than others." This is not accurate. For the reasons articulated above in *Hampton*, by Justice Kennedy in *Baker*, and by Judge O'Connell in the Michigan Court of Appeals, there is no enforcement of a judgment that has been satisfied. If a judgment has not been paid, then of course enforcement measures remain subject to the even-handed control of the forum. But the preliminary inquiry of whether the judgment is enforceable should be governed by the law of the state of rendition, not the law of the enforcement state. This would assure that all judgments would receive the same treatment regardless of where plaintiffs register their judgments.

Under TacCo's theory, however, even if Clapper obtained a satisfaction in Indiana based on his strawman defense (a motion is pending in Indiana state court on this issue), TacCo could nevertheless collect on the Judgment in Michigan. Or if TacCo registered the Judgment in, say, Florida, depending on how Florida would view these issues, the Judgment may or may not be enforceable. Clapper submits that TacCo's view would lead to chaotic results, affecting substantive rights for arbitrary reasons.

To the extent prudential values implicate the full faith and credit analysis, they support Clapper's interpretation, not TacCo's.

c.

At page 18 of the Brief in Opposition, TacCo argues that "the basic fallacy" of Clapper's argument is that Clapper is allegedly raising defenses to the Judgment

itself, something he did not do in the lower courts. Clapper is not arguing that the Judgment in Indiana is flawed, was entered fraudulently, or the like. His argument is that the Judgment has been paid. There is nothing untimely about raising this defense in a post-judgment proceeding; naturally, the defense of payment *always* arises in a post-judgment phase.

d.

At page 18 and note 9 of the Brief in Opposition, TacCo finds alleged analytical inconsistency with Clapper's use of *Michigan's* procedural rules to make his strawman arguments based in *Indiana* common law.

There is no inconsistency. As argued in the Petition, and consistent with the Second Restatement of the Conflict of Laws, the procedural vehicles to test substantive defenses are those provided by the forum law, while the legal standards applicable to the substantive defenses are provided by the law of the state of rendition.[19] The same concept finds support in other areas of the law, like when states make substantive choice of law decisions, or when federal courts apply the *Erie* doctrine. The forum state always applies its procedural law.

e.

At pages 19 and 20 of the Brief in Opposition, TacCo argues that Clapper's citation to Section 115 of

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[19] Clapper Petition, p. 12.

the Second Restatement of the Conflicts of Law is inapplicable because Clapper's arguments allegedly bring no material equities into play.

Clapper cited Section 115 as authority for the Academy's position that when a post-judgment defendant seeks certain relief from a judgment, the enforcing state should look to the law of the state rendering the judgment to determine if such relief is available (although the enforcing state should apply its procedural law in testing the defense). The purpose of citation to Section 115 was not to illustrate that there are equities that necessarily preclude enforcement of the Judgment. The broader point was to advise this Court that the Academy's position is that courts should look to the rendering state's law to test defenses to the Judgment. And if an enforcing state looks to the rendering state's law to test *equitable* defenses, why, then, would an enforcing state not look to the rendering state's law for purposes of *payment* defenses?

Clapper also cited to Section 116 of the Restatement, its comments, and illustrations (cited in the Petition), which are not tied to equities. These authorities support Clapper's belief that in order to determine if payment has been made, the enforcing state should look to the law of the state rendering the judgment.

In most cases, of course, the issue of whether a judgment has been paid is not a difficult one. But this is one of those cases where two states analyze the issues raised in this case very differently. The Court can probably come up with a number of other

situations where two states may have very different laws relating to a post-judgment defense to judgment, and where the continued viability of a judgment is in serious issue. In this way, certiorarai in this case could cover a lot of ground in an area of the law that could probably use greater and more in depth exposition. And for that, Clapper seeks the writ of certiorari.

f.

At page 20 of the Brief in Opposition, TacCo argues that Clapper "has never paid a penny towards satisfying [the Judgment]." The statement is astounding in light of the fact that TacCo produced no evidence in the lower courts that TacCo ever paid "a penny" *for* the Judgment. As demonstrated, ART paid for it. And as demonstrated *supra* and in the lower courts, there is no evidence that TacCo borrowed any money to pay Inland. Moreover, ART guaranteed TacCo's payment of the $1.5 million note made in favor of Inland.[20] With this arrangement in mind, it should come as no surprise that in six-plus years, TacCo has never sought to enforce the Judgment against ART.

CONCLUSION

For the foregoing reasons and for the reasons articulated in his Petition, Petitioner respectfully

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[20] Inland would not have accepted TacCo's $1.5 million note (TacCo being a single purpose entity in existence for a matter of days) without ART's guaranty of payment of the note (ART being a multi-million dollar, publicly-traded company with real estate holdings all over the country).

requests that the Court grant his Petition, and issue a writ of certiorari to the Michigan Court of Appeals.

Respectfully submitted,

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APPENDIX

APPENDIX 1

WIRE TRANSFER BUSINESS RECORDS, FORMS, AND PAYMENT ADVICE

[Fold-out exhibit, see next six pages]

SOUTHTRUST BANK OF ALABAMA — ÔReportIdÊ Run 13-MAR-2002 17:44 Page 2971
FULL TRANSACTION REPORT — For 13-MAR-2002

<<< TRN: 020313-001508 >>>

**** MESSAGE ENVELOPE **** (Bank : SBA)

SRC:INT CALLER:SHEETS, KERRI W. EXT:
RPT# AMT:1,477,072.50 CUR:USD TRORS
TEST:538338 VAL:// TYP:FTR/1000 FMS:S CHG:DB:Y CD:Y COM:N CBL:N

IBT D/68189797/
AMER RLTY INVESTORS INC
1800 VALLEY VIEW LN STE 300
DALLAS TX 75234
SEND:S/COMLREAL
COMMERCIAL REAL ESTATE DEPT
DONT MAIL
DONT MAIL

CDT *A/071000770 ADV:FED
AMER NATL CHGO
AMERICAN NATIONAL BANK
CHICAGO, IL
BNF:/5330257875 CHG: BOTH
INLAND MORTGAGE CORP OPERATING ACCT

ORIG TO BNF INFO:
REF AMER RLTY INVESTORS LNB1218

**** CREDIT PAYMENT MESSAGE TEXT ****

{1510} Type/Subtype Code:
Type Code: 10 (Transfer of funds)
Subtype Code: 00 (Regular transfer)

{2000} Amount: $1,477,072.50

{3100} Sending Bank:
ABA number: 062000080
Short name SOUTHTRUST BNK
ABA lookup: Address not on file

{3320} Sender Reference 020313001508

{3400} Receiving Bank:
ABA number: 071000770
Short name: AMER NATL CHGO
ABA lookup Address not on file

{3600} Business Function Code: CTR (Customer transfer)

{4200} Beneficiary: D/5330257875
INLAND MORTGAGE CORP OPERATING ACCT

{5000} Originator: D/68189797
AMER RLTY INVESTORS INC
1800 VALLEY VIEW LN STE 300
DALLAS TX 75234

{6000} Originator to Beneficiary Info REF AMER RLTY INVESTORS LNB1218

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SOUTHTRUST BANK OF ALABAMA                  ÕReportIdÊ Run 13-MAR-2002 17:44 Page  2994
FULL TRANSACTION REPORT                                 For 13-MAR-2002

<<< TRN: 020313-001519 >>>

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RPTH          AMT:250,000.00          CUR:USD                              TRNH
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-------------------------------------------------------------------------------
DBT D/68189797/                          CDT D/69918700/                    ADV:LTR
AMER RLTY INVESTORS INC                  HBA OPERATING
1800 VALLEY VIEW LN STE 300              1800 VALLEY VIEW LN STE 300
DALLAS TX 75234                          DALLAS TX 75234
SEND:B/COMLREAL
COMMERCIAL REAL ESTATE DEPT
DONT MAIL
DONT MAIL


    **** MESSAGE TEXT ****


    MESSAGE HISTORY SEQUENCE
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   MTRANSFTRENT_LOG         OPRID: SBALCH  TIME: 13-MAR-2002 11:39:28.83
        *DDA_INQ_DBT        INQ_DBT  AMOUNT: 250000.00
        *DDA_INQ_CDT        INQ_CDT  AMOUNT: 250000.00
        *DBT_AUT
        CALLBACKQ       DEQ OPRID: SBALCH
        Memo: Ran: BYAUT
   MTRANSCALLBACK_LOG       OPRID: SBACDM  TIME: 13-MAR-2002 11:40:47.77
        Memo: No need to phone
        *SYS_MEMO           Message checked by STOP filter - NO MATCH.
        *SYS_MEMO           Message checked by STOP filter - 13-MAR-2002 11:40.
47.83
        DDA_AUTQ        DEQ TEXT: 020313001519AMOUNT: 250000.00
        DDA_PDH_01          SEQ #: 1105 13-MAR-2002 11:40:47.90 Info: PD
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code: 10
        *SYS_MEMO           Message from IBM host: code: 10, OVERDRAFT ERROR
        DDA_POST_01         SEQ #: 1105 13-MAR-2002 11:40:49.17 Info: PD
        Memo: ERROR REPORTED BY HOST: Unable to post. 020313001519
        *SYS_MEMO           POTENTIAL OVERDRAFT IMPACT -213,935.66
        *SYS_MEMO           Ran: AC-CD
        RISK_Q          DEQ CATEGORY: REVIEW   AMOUNT: 250000.00
        Memo: Ran: AC-CD
        RISK_LOG            OPRID: SBACDM  TIME: 13-MAR-2002 11:41:49.85
        Memo: SBA-CDM - INTERNAL
        *MEMO               All balance conditions overridden for TRN 020313-
001519; Routed.
        DDA_AUTQ        DEQ TEXT: 020313001519AMOUNT: 250000.00
        DDA_PDH_01          SEQ #: 1120 13-MAR-2002 11:41:51.38 Info: PD
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        DDA_POST_01         SEQ #: 1120 13-MAR-2002 11:41:52.61 Info: PD
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<<< TRN: 020313-001518 >>>

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DBT D/68189797/ CDT D/69980454/ ADV:LTR
AMER REIT INVESTORS INC TACCO FINANCIAL INC
1800 VALLEY VIEW LN STE 300 1800 VALLEY VIEW LN
DALLAS TX 75234 SUITE 300
SEND:B/COMLREAL DALLAS, TX 75234
COMMERCIAL REAL ESTATE DEPT
DONT MAIL
DONT MAIL

**** MESSAGE TEXT ****

MESSAGE HISTORY SEQUENCE

SBA is the owning bank. Priority: Delivery ACK:
REF_INDEX REF #: 020313001518 13-MAR-2002 11:39:14.13
MTRANSFTRNT_LOG OPRID: SBALCH TIME: 13-MAR-2002 11:39:14.13
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*SYS_MEMO Message checked by STOP filter - 13-MAR-2002 11:39:20.96
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*DDA_INQ_CDT INQ_CDT AMOUNT: 5000.00
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DDA_PDM_01 SEQ #: 1094 13-MAR-2002 11:39:21.03 Info: PD
*DDA RAM_DBT AMOUNT: 5000.00
DDA_POST_01 SEQ #: 1094 13-MAR-2002 11:39:22.31 Info: PD
Memo: DR posted with tran cd: 020313001518
DDA_PDM_01 SEQ #: 1095 13-MAR-2002 11:39:22.32 Info: PC
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Memo: CR posted with tran cd: 020313001518
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PAYADV_LOG OPRID: $$$PAY TIME: 13-MAR-2002 11:39:23.76
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*DDA RAM_CDT AMOUNT: 5000.00
SYSPRFBAL PRF_DDA_CDT AMOUNT: 5000.00
DDA_BACKEND ENQ TEXT: 020313001518

H

SOUTHTRUST BANK
P. O. BOX 2554
BIRMINGHAM, AL 35290
TELEPHONE 205-254-4000
DEAF/HOH 205-667-4154 TT/TTY
PAGE 8 STATEMENT DATE 03/31/02
ITEMS ENCLOSED 0
---- 58-189-787 ----

---- AMER RLTY INVESTORS INC CY 01

DETAILED ACCOUNT TRANSACTIONS

OTHER DEBITS

DATE POSTED	AMOUNT	DESCRIPTION
		020311001536
03/11	440,000.00	OUTGOING WIRE TRANSFER
		020311001511
03/11	387,001.74	TRANSFER TO 0061304963
03/11	300,000.00	OUTGOING WIRE TRANSFER
		020311001506
03/11	130,000.00	OUTGOING WIRE TRANSFER
		020311001509
03/11	70,000.00	OUTGOING WIRE TRANSFER
		020311001519
03/11	690.91	TRANSFER TO 0061305359
03/12	832,498.68	TRANSFER TO 0061304963
03/12	470,000.00	OUTGOING WIRE TRANSFER
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03/13	1,477,072.50	OUTGOING WIRE TRANSFER
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03/13	615,356.07	TRANSFER TO 0061304963
03/13	250,000.00	OUTGOING WIRE TRANSFER
		020313001519
03/13	45,738.80	OUTGOING WIRE TRANSFER
		020313001521
03/13	5,000.00	OUTGOING WIRE TRANSFER
		020313001518
03/13	3,501.33	TRANSFER TO 0061305359
03/14	600,000.00	OUTGOING WIRE TRANSFER

Control #

PAYEE:

PAYOR: ARI (Legal Name of Entity)

Sending Bank: South Trust

Account Name: ARI OPER

Account Number: 68 189 797

General Ledger Account:

Confidential - Subject to Protective Order 000129

$100,000.00

ACCOUNTING UNIT	ACCOUNTING NUMBER	AMOUNT	DESCRIPTION	DUE DATE
922 X0001	142920-7386	$ 100,000.00		
7386 X0001	168920-7386	($ 100,000.00)		
X7899	120900-11	$ 100,000.00		
		VOUCHER TOTAL		
		$ 100,000.00		

PRIORITY PAY:

#24

WIRE INSTRUCTIONS

Name & Address of Receiving Bank: American National Bank, Chicago IL

ABA # 071 000 770

Bank Account Name: Inland Mortgage Corp - Operating Acct

Bank Account Number: 5330257875

ATTENTION: Loan #1218

SPECIAL INSTRUCTIONS:

_____ Urgent

_____ Notify Upon Transmission

_____ Arrange Funds & Notify Prior to Transmission

White

Yellow

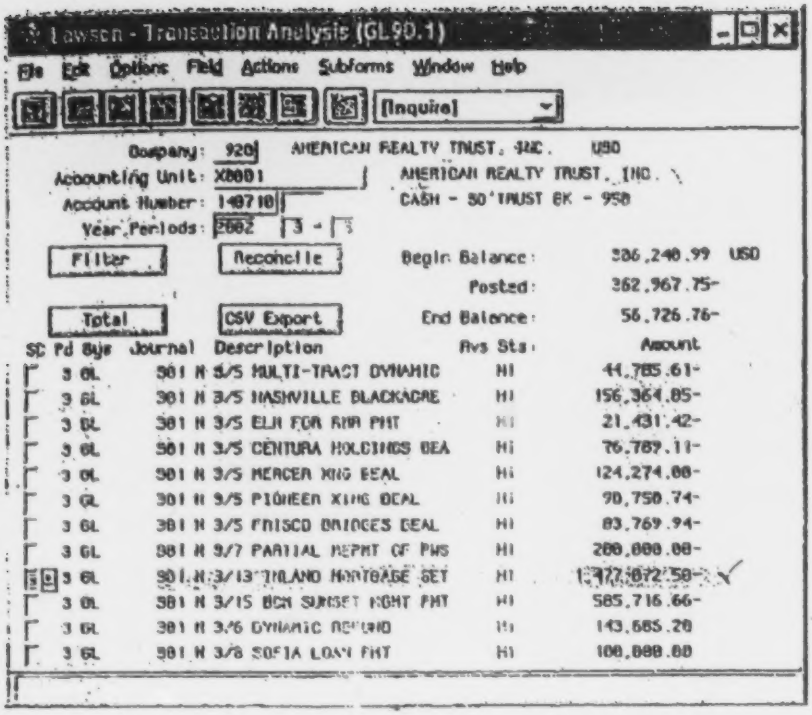
Pink

REQUESTED BY: [signature] DATE: 03.01.02

APPROVED BY: [signature] DATE:

EXECUTED BY: DATE:

BEST AVAILABLE COPY


Lawson - Transaction Analysis (GL90.1)
File Edit Options Field Actions Subforms Window Help
[Inquire]
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Accounting Unit: X0001 AMERICAN REALTY TRUST, INC.
Account Number: 140710 CASH - 50'TRUST BK - 950
Year,Periods: 2002 3 - 3
Filter
Reconcile
Begin Balance: 386,240.99 USD
Posted: 362,967.75-
Total
CSV Export
End Balance: 56,726.76-
SC Pd Sys Journal Description Rvs Sts Amount
3 GL 301 N 3/5 MULTI-TRACT DYNAMIC HI 44,785.61-
3 GL 301 N 3/5 NASHVILLE BLACKACRE HI 156,364.85-
3 GL 301 N 3/5 ELN FOR RMR PMT HI 21,431.42-
3 GL 301 N 3/5 CENTURA HOLDINGS DEA HI 76,789.11-
3 GL 301 N 3/5 MERCER XING DEAL HI 124,274.00-
3 GL 301 N 3/5 PIONEER XING DEAL HI 90,750.74-
3 GL 301 N 3/5 FNISCO BRIDGES DEAL HI 83,769.94-
3 GL 301 N 3/7 PARTIAL REPMT OF PMS HI 200,000.00-
3 GL 301 N 3/13 INLAND MORTGAGE SET HI 1,272,872.50-
3 GL 301 N 3/15 BCN SUNSET MGMT PMT HI 585,716.66-
3 GL 301 N 3/6 DYNAMIC REFUND HI 143,685.20
3 GL 301 N 3/8 SOFIA LOAN PMT HI 100,000.00

#26

Confidential - Subject to Protective Order

APPENDIX 2

EXCERPT FROM THE DEPOSITION OF FRANCIS C. PANICO OAKLAND COUNTY

[HEARING HELD MARCH 16, 2006]

* * *

[p. 30]

A. Yes.

Q. Whose handwriting is that?

A. Mine.

Q. It's dated February 11, 2002. Why did you prepare this document? Is this, again –

A. Well –

Q. I'm sorry. – a combination of your notes –

A. Yes.

Q. – discussion as well as your comments?

A. Yes. These were just notes that I took at a conversation that was going on.

Q. Okay. The second line from the top or second, I guess, the sentence from the top says "Arnett helped convince the judge that the trial should not be continued since the outcome of the Texas trail would have little or no difference on this trial."

Do – do you recall writing that, what the purpose was?

A. Well, that's my handwriting, so I definitely wrote it. I don't recall why I wrote it.

Q. All right. Were you aware that it was a Texas trial pending between ART and Mr. Clapper at the time; that is, it was

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proceeding to trial very shortly after this?

A. I remember it now because you have refreshed my memory.

Q. Okay. Mr. Arnett was going to convince the Indiana judge that the trial on this case, the Inland case, shouldn't – or shouldn't be continued or stayed until the federal case was tried first?

A. I don't remember any of the details.

Q. Okay. There was a concern that it would be – it would not proceed, and ART wanted it to

proceed; that is, the Indiana matter as part of this?

A. I don't remember.

MR. LEFKOFSKY: Are you asking her that?

MR. MYCHLOWYCH: I'm asking if that's the case.

THE WITNESS: I don't remember.

BY MR. MYCHALOWYCH:

Q. All right. Let's go to the next grouping. There some looks like dash marks, and then some points being made. Well – so that question's about that.

In that second grouping, it says, "If the judgment ever comes back into our hands."

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Who is "our"? Inland's?

A. Inland's.

Q. " . . . ART gets credit for one million five."

Is that one million – I'm sorry. It says 1.5 dollars. That's the million five in cash that was paid?

A. Yes.

Q. All right. So that was your understanding that if Inland ever – the judgment – there was a default and the judgment ever came, ART would get the credit against the judgment for the million five?

A. Yes.

Q. That's because they paid it?

A. Yes.

MR. LEFKOFSKY: Objection. Let's not put words in her mouth because at some point we can get to who actually paid the 1.5 million.

MR. MYCHALOWYCH: Oh, I think we know –

MR. LEFKOFSKY: We can do that if you want because otherwise you're just testifying for her at this point.

BY MR. MYCHALOWYCH:

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Q. Let me – I disagree.

Let's look at exhibit – or what's been Bates stamped exhibit – as part of Exhibit A 0776 and 0777.

(WHEREUPON Bates Nos. 0776 - 0777 were tendered to the witness)

BY MR. MYCHALOWYCH:

Q. Actually, I can probably skip to 007 – 0776 and go directly to 0777. Do you see that?

A. Yes.

Q. All right. There is – appears to be a Form 10-Q from the Securities and Exchange Commission, Quarterly Report, and there's a notation. It says, "Ann Marie, these are financials on the new entity that will be purchasing the judgment on County Squire ARI."

And then there's a – it looks like initials F.C.P. Are those your initials?

A. Yes.

Q. And is that your notation?

A. Yes.

Q. All right. The financials that are being provided in this are for American Realty

* * *